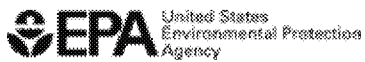


Message

From: Flanders, Phillip [Flanders.Phillip@epa.gov]
Sent: 2/14/2019 7:36:30 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: Clean version of PrelimPlan 14
Attachments: Draft Prelim Plan 14_formatted_clean_021319.docx

Phillip Flanders, Ph.D., P.E.

Environmental Engineer
Engineering and Analysis Division
Office of Science and Technology
Office of Water



Mail Code 4303T
(202) 566-8323
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Message

From: Damico.Brian@epa.gov [Damico.Brian@epa.gov]
Sent: 3/11/2019 8:03:35 PM
To: Scozzafava, MichaelE [Scozzafava.MichaelE@epa.gov]
Subject: Fwd: Revised ELG Plan
Attachments: Draft Prelim Plan 14 2019.03.11.docx; ATT00001.htm; Draft FRN Prelim Plan 14 20190311.docx; ATT00002.htm

Big shock. I forgot to CC you.

-B

Brian D'Amico
Chief, Technology and Analytical Support Branch
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
Washington, DC
(202) 566-1069 (Office)
(202) 384-2190 (EPA Cell)

Begin forwarded message:

From: "Damico, Brian" <Damico.Brian@epa.gov>
Date: March 11, 2019 at 1:01:53 PM EDT
To: "Robert Wood (Wood.Robert@epa.gov)" <Wood.Robert@epa.gov>
Cc: "Flanders, Phillip" <Flanders.Phillip@epa.gov>
Subject: Revised ELG Plan

Rob,

Attached is the revised Preliminary ELG Plan 14 and the associated FRN; both of which incorporate Deborah's comments. I'm about to return her hand written comments back to you.

-B

Brian D'Amico
Chief, Technology and Analytical Support Branch
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
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(202) 384-2190 (EPA Cell)

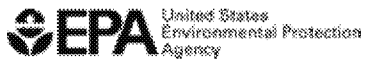
Message

From: Flanders, Phillip [Flanders.Phillip@epa.gov]
Sent: 1/30/2019 8:24:52 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: PP14 Doc and FRN
Attachments: Draft Prelim Plan 14_2018.1.29.docx; FRN Prelim Plan 14_2019.1.30.docx

Here's where we are with Prelim Plan 14 and its FRN. The FRN is very short (on purpose), but I left some comments with some options for consideration. This version of the plan document has the updated pie charts.

Phillip Flanders, Ph.D., P.E.

Environmental Engineer
Engineering and Analysis Division
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Office of Water



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Appointment

From: Ross, David P [ross.davidp@epa.gov]
Sent: 8/6/2018 5:49:33 PM
To: Ross, David P [ross.davidp@epa.gov]; Forsgren, Lee [Forsgren.Lee@epa.gov]; Best-Wong, Benita [Best-Wong.Benita@epa.gov]; McDonough, Owen [mcdonough.owen@epa.gov]; Wildeman, Anna [wildeman.anna@epa.gov]
CC: Penman, Crystal [Penman.Crystal@epa.gov]; Campbell, Ann [Campbell.Ann@epa.gov]; Nagle, Deborah [Nagle.Deborah@epa.gov]; Wood, Robert [Wood.Robert@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Parikh, Pooja [Parikh.Pooja@epa.gov]; Crawford, Tiffany [Crawford.Tiffany@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: Preliminary ELG Program Plan 14: Options Selection
Attachments: Flanders--Meeting Request OW Leadership2018-08-02-152054.pdf; PrelimPlan14 Briefing_082118.docx
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Start: 8/22/2018 6:00:00 PM
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Preliminary ELG Program Plan 14 - Option Selection Briefing

Clean Water Act Requirements for Effluent Guidelines Review, Planning and Schedule

- CWA sections 304(m)(1)(B) and (C) require the Administrator to identify industries discharging pollutants for which guidelines have not yet been published and to establish a schedule for promulgation of such guidelines (for direct discharging industries).
- CWA section 304(m)(1)(A) requires the Administrator to “establish a schedule for the annual review and revision of promulgated effluent guidelines.”
- CWA section 304(b) requires the Administrator to “at least annually . . . revise, if appropriate” effluent guidelines.
- CWA section 307(b)(1) requires the Administrator to promulgate pretreatment standards (for indirect discharging industries).
- CWA section 304(g)(1) requires the Administrator to “review . . . annually . . . and, if appropriate, revise” pretreatment standards.
- CWA sections 304(m)(1) & (2) require the Administrator to publish a plan biennially, after public review and comment, establishing a schedule for the annual review and revision of existing effluent guidelines, as well as establishing a schedule for the promulgation of guidelines for any new industries identified by the Agency as warranting regulation. Promulgation of guidelines for any new industries identified shall be no later than 3 years after publication of the plan. (EAD presents its review and revision schedule for pretreatment standards in this plan, as well.)
- EAD reviews both effluent guidelines and pretreatment standards in our plans and refer to them collectively as Effluent Limitations Guidelines and Standards (ELGs).

Previous Plans and Approach

- We published the Final 2016 ELG Plan on May 2, 2018. The Final 2016 Plan discussed:
 - One new rulemaking for the Steam Electric Power Generating Category
 - Three new studies: Holistic study of oil and gas extraction wastewater, per- and polyfluoroalkyl substances (PFAS), Electrical and Electronic Components (E&EC)
 - Updates on petroleum refining and centralized waste treatment (CWT) facilities
- **We have simplified the numbering system for the biennial plans, this is Preliminary ELG Program Plan 14 rather than the 2018 Preliminary ELG Program Plan.**

Deliberative Process / Ex. 5

- **Deliberative Process / Ex. 5**

Proposed Content of Preliminary Plan 14

- We are seeking confirmation on the content of Preliminary Plan 14 from this “Options Selection” briefing. From this we will draft the Preliminary Plan for your review in November prior to OMB review.

Deliberative Process / Ex. 5

K

Appendix

Background on Effluent Guidelines Program Planning Process

- The Clean Water Act authorizes EPA to establish technology-based Effluent Limitations Guidelines and Standards (ELGs) to control discharges of pollutants in industrial wastewater to surface waters and publicly owned treatment plants (POTWs).
 - Statute designed to increasingly elevate the technology floor for all dischargers in an industrial sector to match the performance of the best plants in the industry.
- The CWA also directs EPA to review the existing effluent guidelines annually, and revise them if appropriate, as well as to identify new categories of sources for which ELGs have not been developed. The statute also requires annual review of existing pretreatment standards, and revision, if appropriate.
 - In reviewing (through studies) existing ELGs for possible revision, we typically consider four main factors:
 - The performance of applicable and demonstrated wastewater treatment technologies, process changes, and pollution prevention alternatives to reduce pollutants in an industrial category's wastewater;
 - The costs (economic achievability) of demonstrated wastewater treatment technologies, process changes, and pollution prevention alternatives;
 - The amount and types of pollutants in an industrial category's discharge; and
 - The opportunity to promote technological innovation to eliminate inefficiencies or impediments to pollution prevention.
 - In identifying new categories:
 - For discharges to surface waters, the CWA requires EPA to identify sources discharging non-trivial amounts of toxic and non-conventional pollutants to surface waters for which EPA has not established ELGs.
 - For discharges to POTWs, the CWA requires EPA to identify sources of pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.
- The CWA directs EPA to publish a plan (the Effluent Guidelines Program Plan) every two years that establishes a schedule for the annual review and revision of existing effluent guidelines and identifies any new industries identified for ELG rulemaking. The plan must also provide a rulemaking schedule for any new industries identified, under which promulgation of guidelines shall be no later than 3 years after publication of the plan.
 - We typically prepare a Preliminary Plan one year, take public comment, and then publish a Final Plan the next.
 - We also provide information on our annual review of existing ELGs in the plans to increase transparency and stakeholder awareness of the planning process.

Legal Framework for EPA's Effluent Limitations Guidelines Review and Revision Process

Subject	Relevant Clean Water Act Provision(s)	Notes
Effluent Limitations "Guidelines"	<p>Section 304(m)(1): "Within 12 months after February 4, 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan that shall—</p> <p>(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with [section 304(b)];</p> <p>(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under [section 304(b)(2) and section 316] have not previously been published; and</p> <p>(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than . . . 3 years after the publication of the plan for categories identified in [plans published after Feb. 4, 1987].</p> <p>Section 304(m)(2): "The Administrator shall provide for public review and comment on the plan prior to final publication."</p>	<p>Regarding EPA's criteria for reviewing guidelines, see <i>Our Children's Earth Foundation v. EPA</i>, below.</p> <p>Regarding the promulgation of guidelines for new industries, see <i>Natural Resources Defense Council v. EPA</i>, below.</p>
	<p>Section 304(b), which is referenced in section 304(m), states: "For the purpose of adopting or revising effluent limitations . . . the Administrator shall . . . publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and at least annually thereafter, revise, if appropriate, such regulations."</p>	<p>In 2010, environmental groups sued EPA, claiming that it had a mandatory duty to revise effluent guidelines for the steam electric generating industry within one year after the Agency announced its intent to begin such a rulemaking. EPA subsequently entered a consent decree with the litigants, which established a longer schedule for the rulemaking.</p>
Effluent Limitations	<p>Section 301(b)(2) requires effluent limitations for categories of point sources that are based on best available technology economically achievable, and section 301(d) states that "[a]ny effluent limitation required under [section 301(b)(2)] shall be reviewed at least every five years and, if appropriate, revised . . ."</p>	<p>EPA's annual review of existing effluent guidelines includes a review of the effluent limitations contained within those guidelines.</p>
Pretreatment Standards	<p>Section 307(b)(1) requires the Administrator to publish regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works, and section 304(g) states that "the Administrator shall . . . review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants . . ."</p>	<p>For consistency and transparency, EPA annually reviews pretreatment standards in the same way it annually reviews effluent guidelines, and it describes its review and revision plans for pretreatment standards along with effluent guidelines in the 304(m) plan.</p>

Relevant Case Law

Our Children's Earth Foundation v. U.S. EPA (9th Cir. 2008)

- Environmental groups sued EPA, claiming in part that it had a mandatory duty to review effluent guidelines and limitations using a technology-based approach, rather than a hazard-based approach. The Ninth Circuit considered whether this and other claims were properly brought under the citizen-suit provision of the CWA, which allows for suits where there is an alleged failure to perform a non-discretionary duty.
- The Court held that the Act does not require EPA to *review* existing effluent guidelines and limitations using a technology-based approach (although it does mandate a technology-based approach in the *promulgation or revision* of regulations). Thus, the Court found that the claim regarding EPA's effluent guidelines and limitations review criteria was not properly before it.
- The Court also held that (1) the Act does not require the publication of 304(m) plans to be synchronized with EPA's annual review or with the calendar year, and (2) while the identification of new categories of point source discharges is a non-discretionary duty, the precise number and kind of such categories identified is discretionary with the Administrator.

Natural Resources Defense Council v. U.S. EPA, 542 F.3d 1235 (9th Cir. 2008)

- Environmental groups sued EPA, claiming that it had a mandatory duty under section 304(m) of the CWA to promulgate ELGs and NSPSs for the construction and development point source category no later than three years after the Agency had listed the category (one for which ELGs and NSPSs had not yet been published) as a new category (as opposed to a revision of an existing ELG) in the 304(m) plan.
- Although the Agency had listed the construction category for rulemaking in its 304(m) plan in 2000, and subsequently published a proposed rule for the industry in 2002, it had since concluded that a rulemaking was not warranted because construction site storm water discharges were already being adequately addressed by existing regulations and the cost of the proposed ELGs was too high and disproportionate given the expected discharge reductions. Thus, in 2004, the Agency removed the construction industry from the 304(m) plan, stating that section 304(m)(1)(B)'s requirements apply only to categories that are discharging non-trivial amounts of toxic or nonconventional pollutants, and that discharges from the construction industry consist predominantly of conventional pollutants (TSS).
- In a decision affirming the district court, the Ninth Circuit held that the "unequivocal language" of the Act required the Agency to promulgate ELGs and NSPSs for the construction industry once it was listed as a new category in the 304(m) plan. The Court did not reach the question of whether EPA could avoid promulgating ELGs and NSPSs for a point source category that had, at one time, been included in a 304(m) plan, if the Agency "formally amended" the 304(m) plan that triggered the duty to promulgate or undertook some other "formal process to delist" the category.

- Since this decision, EPA has listed a new industry for an effluent guidelines rulemaking in the 304(m) plan and subsequently removed the industry from the plan, but only after providing public notice and an opportunity for comment on that decision. Nobody has challenged these actions.

List of Effluent Guidelines Promulgated by EPA

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18	Leather Tanning and Finishing	425	1982	1996
19	Pesticide Chemicals	455	1978	1996
20	Organic Chemicals, Plastics and Synthetic Fibers (OCPSP)	414	1987	1993
21	Nonferrous Metals Manufacturing	421	1976	1990
22	Nonferrous Metals Forming and Metal Powders	471	1985	1989
23	Aluminum Forming	467	1983	1988
24	Ore Mining and Dressing (Hard Rock Mining)	440	1975	1988
25	Battery Manufacturing	461	1984	1986
26	Copper Forming	468	1983	1986
27	Metal Finishing	433	1983	1986
28	Metal Molding and Casting (Foundries)	464	1985	1985
29	Porcelain Enameling	466	1982	1985
30	Plastics Molding and Forming	463	1984	1984
31	Sugar Processing	409	1974	1984
32	Coil Coating	465	1982	1983
33	Electrical and Electronic Components	469	1983	1983
34	Electroplating	413	1974	1983
35	Inorganic Chemicals Manufacturing	415	1982	1982
36	Petroleum Refining	419	1974	1982
37	Textile Mills	410	1974	1982
38	Timber Products Processing	429	1974	1981
39	Mineral Mining and Processing	436	1975	1979

40	Carbon Black Manufacturing	458	1976	1978
41	Canned and Preserved Fruits and Vegetable Processing	407	1974	1976
42	Explosives Manufacturing	457	1976	1976
43	Gum and Wood Chemicals Manufacturing	454	1976	1976
44	Hospitals	460	1976	1976
45	Photographic	459	1976	1976
46	Asbestos Manufacturing	427	1974	1975
47	Canned and Preserved Seafood (Seafood Processing)	408	1974	1975
48	Ink Formulating	447	1975	1975
49	Paint Formulating	446	1975	1975
50	Paving and Roofing Materials (Tars and Asphalt)	443	1975	1975
51	Soap and Detergent Manufacturing	417	1974	1975
52	Cement Manufacturing	411	1974	1974
53	Dairy Products Processing	405	1974	1974
54	Ferroalloy Manufacturing	424	1974	1974
55	Fertilizer Manufacturing	418	1974	1974
56	Glass Manufacturing	426	1974	1974
57	Grain Mills	406	1974	1974
58	Phosphate Manufacturing	422	1974	1974
59	Rubber Manufacturing	428	1974	1974

Appointment

From: Higgs, Michele [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=56d94e5b15744b62beff44568579f7de-Higgs, Mich]
Sent: 8/20/2018 2:11:15 PM
To: Nagle, Deborah [Nagle.Deborah@epa.gov]; Wood, Robert [Wood.Robert@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Parikh, Pooja [Parikh.Pooja@epa.gov]
CC: Lape, Jeff [lape.jeff@epa.gov]; Tripp, Anthony [Tripp.Anthony@epa.gov]; Born, Tom [Born.Tom@epa.gov]; Feret, Karen (Milam) [Feret.Karen@epa.gov]; Matuszko, Jan [Matuszko.Jan@epa.gov]; Strassler, Eric [Strassler.Eric@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Lewis, Samantha [Lewis.Samantha@epa.gov]; Whitlock, Steve [Whitlock.Steve@epa.gov]; Siddiqui, Ahmar [Siddiqui.Ahmar@epa.gov]; Benware, Richard [Benware.Richard@epa.gov]; Crawford, Tiffany [Crawford.Tiffany@epa.gov]; Levine, MaryEllen [levine.maryellen@epa.gov]; Neugeboren, Steven [Neugeboren.Steven@epa.gov]
Subject: Preliminary ELG Program Plan 14: Options Selection
Attachments: PrelimPlan14 Briefing_081518.docx
Location: DCRoomWest5233B/DC-CCW-OST
Start: 8/20/2018 5:00:00 PM
End: 8/20/2018 6:00:00 PM
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Preliminary ELG Program Plan 14 - Option Selection Briefing

Clean Water Act Requirements for Effluent Guidelines Review, Planning and Schedule

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Deliberative Process / Ex. 5

Proposed Content of Preliminary Plan 14

Deliberative Process / Ex. 5

Appendix

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21	Nonferrous Metals Manufacturing	421	1976	1990
22	Nonferrous Metals Forming and Metal Powders	471	1985	1989
23	Aluminum Forming	467	1983	1988
24	Ore Mining and Dressing (Hard Rock Mining)	440	1975	1988
25	Battery Manufacturing	461	1984	1986
26	Copper Forming	468	1983	1986
27	Metal Finishing	433	1983	1986
28	Metal Molding and Casting (Foundries)	464	1985	1985
29	Porcelain Enameling	466	1982	1985
30	Plastics Molding and Forming	463	1984	1984
31	Sugar Processing	409	1974	1984
32	Coil Coating	465	1982	1983
33	Electrical and Electronic Components	469	1983	1983
34	Electroplating	413	1974	1983
35	Inorganic Chemicals Manufacturing	415	1982	1982
36	Petroleum Refining	419	1974	1982
37	Textile Mills	410	1974	1982
38	Timber Products Processing	429	1974	1981
39	Mineral Mining and Processing	436	1975	1979

[PAGE * MERGEFORMAT]

40	Carbon Black Manufacturing	458	1976	1978
41	Canned and Preserved Fruits and Vegetable Processing	407	1974	1976
42	Explosives Manufacturing	457	1976	1976
43	Gum and Wood Chemicals Manufacturing	454	1976	1976
44	Hospitals	460	1976	1976
45	Photographic	459	1976	1976
46	Asbestos Manufacturing	427	1974	1975
47	Canned and Preserved Seafood (Seafood Processing)	408	1974	1975
48	Ink Formulating	447	1975	1975
49	Paint Formulating	446	1975	1975
50	Paving and Roofing Materials (Tars and Asphalt)	443	1975	1975
51	Soap and Detergent Manufacturing	417	1974	1975
52	Cement Manufacturing	411	1974	1974
53	Dairy Products Processing	405	1974	1974
54	Ferroalloy Manufacturing	424	1974	1974
55	Fertilizer Manufacturing	418	1974	1974
56	Glass Manufacturing	426	1974	1974
57	Grain Mills	406	1974	1974
58	Phosphate Manufacturing	422	1974	1974
59	Rubber Manufacturing	428	1974	1974

Appointment

From: Nagle, Deborah [Nagle.Deborah@epa.gov]
Sent: 6/12/2018 8:03:40 PM
To: Nagle, Deborah [Nagle.Deborah@epa.gov]; Lape, Jeff [lape.jeff@epa.gov]; Wood, Robert [Wood.Robert@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Parikh, Pooja [Parikh.Pooja@epa.gov]
CC: Crawford, Tiffany [Crawford.Tiffany@epa.gov]; Tripp, Anthony [Tripp.Anthony@epa.gov]; Born, Tom [Born.Tom@epa.gov]; Strassler, Eric [Strassler.Eric@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Lewis, Samantha [Lewis.Samantha@epa.gov]; Whitlock, Steve [Whitlock.Steve@epa.gov]; Siddiqui, Ahmar [Siddiqui.Ahmar@epa.gov]; Benware, Richard [Benware.Richard@epa.gov]; Milam, Karen [Milam.Karen@epa.gov]; Matuszko, Jan [Matuszko.Jan@epa.gov]

Subject: Pre-Options Selection Briefing for Preliminary ELG Program Planning Plan 14 --
Attachments: PrelimPlan14 Briefing_061818.docx
Location: DCRoomWest5233B/DC-CCW-OST

Conference Line/Code / Ex. 6

Start: 6/18/2018 6:00:00 PM
End: 6/18/2018 6:50:00 PM
Show Time As: Busy

Note Attachment

POC: Philip Flanders
Phone: 202-566-8323

Conference Line/Code / Ex. 6

Preliminary Effluent Guidelines Program Plan 14 - Option Selection Briefing

Background on Effluent Guidelines Program Planning Process

- The Clean Water Act authorizes EPA to establish technology-based Effluent Limitations Guidelines and Standards (ELGs) to control discharges of pollutants in industrial wastewater to surface waters and publicly owned treatment plants (POTWs).
 - Statute designed to increasingly elevate the technology floor for all dischargers in an industrial sector to match the performance of the best plants in the industry.
- The CWA also directs EPA to review the existing effluent guidelines annually, and revise them if appropriate, as well as to identify new categories of sources for which ELGs have not been developed. The statute also requires annual review of existing pretreatment standards, and revision, if appropriate.
 - In reviewing (through studies) existing ELGs for possible revision, we typically consider four main factors:
 - The performance of applicable and demonstrated wastewater treatment technologies, process changes, and pollution prevention alternatives to reduce pollutants in an industrial category's wastewater;
 - The costs (economic achievability) of demonstrated wastewater treatment technologies, process changes, and pollution prevention alternatives;
 - The amount and types of pollutants in an industrial category's discharge; and
 - The opportunity to promote technological innovation to eliminate inefficiencies or impediments to pollution prevention.
 - In identifying new categories:
 - For discharges to surface waters, the CWA requires EPA to identify sources discharging non-trivial amounts of toxic and non-conventional pollutants to surface waters for which EPA has not established ELGs.
 - For discharges to POTWs, the CWA requires EPA to identify sources of pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.
- The CWA directs EPA to publish a plan (the Effluent Guidelines Program Plan) every two years that establishes a schedule for the annual review and revision of existing effluent guidelines and identifies any new industries identified for ELG rulemaking. The plan must also provide a rulemaking schedule for any new industries identified, under which promulgation of guidelines shall be no later than 3 years after publication of the plan.
 - We typically prepare a Preliminary Plan one year, take public comment, and then publish a Final Plan the next.
 - We also provide information on our annual review of existing ELGs in the plans to increase transparency and stakeholder awareness of the planning process.

Status of the Planning Process

- We published the Final 2016 ELG Plan on May 2, 2018.
 - The Plan identified one new rulemaking (and the associated schedule) for the Steam Electric Power Generating Point Source Category.
 - The Plan announced that EPA is initiating three new studies:
 - Holistic study of oil and gas extraction wastewater from onshore facilities
 - Study of per- and polyfluoroalkyl substances (PFAS)
 - Electrical and Electronic Components (E&EC)
 - Also provided summary from our data review efforts, including updates on “detailed” studies for two industrial categories: petroleum refining and centralized waste treatment (CWT) facilities.
- **We are now seeking confirmation on the content of the next plan – Preliminary ELG Program Plan 14 (Preliminary Plan 14).**
- **We have changed the numbering system for the biennial plans**
 - Previous plans were named based on the year at the end of the biennial cycle. For example, the most recent final plan was the Final 2016 Plan and the next biennial plan would have been the Final 2018 Plan. However, we don’t expect to publish the next Final Plan until April of 2020.
 - To reduce confusion, we will number each biennial plan instead. Since the Final 2016 ELG Program Plan was the 13th Final ELG Program Plan that we have produced, the next final plan is Final ELG Program Plan 14. The corresponding preliminary plan, which is the subject of this briefing, is Preliminary ELG Program Plan 14.
 - Note that we should refer to the plans as “ELG Program Plans” rather than 304m Plans as CWA Section 304(m) only applies to direct dischargers. (Review of pretreatment standards is under CWA Section 304(g).) “ELG Program Plan” better represents that the plans are communications tools for our entire program while still meeting all requirements under 304(m).

Proposed Content of Preliminary ELG Program Plan 14

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Timeline for Next Steps and Key Milestones

Deliberative Process / Ex. 5

Appendix

Statutory Background

(see legal framework attachment for specific statutory language and relevant case law)

- CWA sections 304(m)(1)(B) and (C) require the Administrator to identify industries discharging pollutants for which guidelines have not yet been published and to establish a schedule for promulgation of such guidelines (for direct discharging industries).
- CWA section 304(m)(1)(A) requires the Administrator to “establish a schedule for the annual review and revision of promulgated effluent guidelines.”
- CWA section 304(b) requires the Administrator to “at least annually . . . revise, if appropriate” effluent guidelines.
- CWA section 307(b)(1) requires the Administrator to promulgate pretreatment standards (for indirect discharging industries).
- CWA section 304(g)(1) requires the Administrator to “review . . . annually . . . and, if appropriate, revise” pretreatment standards.
- CWA sections 304(m)(1) & (2) require the Administrator to publish a plan biennially, after public review and comment, establishing a schedule for the annual review and revision of existing effluent guidelines, as well as establishing a schedule for the promulgation of guidelines for any new industries identified by the Agency as warranting regulation. Promulgation of guidelines for any new industries identified shall be no later than 3 years after publication of the plan. (EAD presents its review and revision schedule for pretreatment standards in this plan, as well.)

Legal Framework for EPA's Effluent Limitations Guidelines Review and Revision Process

Subject	Relevant Clean Water Act Provision(s)	Notes
Effluent Limitations "Guidelines"	<p>Section 304(m)(1): "Within 12 months after February 4, 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan that shall —</p> <p>(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with [section 304(b)];</p> <p>(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under [section 304(b)(2) and section 316] have not previously been published; and</p> <p>(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than . . . 3 years after the publication of the plan for categories identified in [plans published after Feb. 4, 1987].</p> <p>Section 304(m)(2): "The Administrator shall provide for public review and comment on the plan prior to final publication."</p>	<p>Regarding EPA's criteria for reviewing guidelines, see <i>Our Children's Earth Foundation v. EPA</i>, below.</p> <p>Regarding the promulgation of guidelines for new industries, see <i>Natural Resources Defense Council v. EPA</i>, below.</p>
	<p>Section 304(b), which is referenced in section 304(m), states: "For the purpose of adopting or revising effluent limitations . . . the Administrator shall . . . publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and at least annually thereafter, revise, if appropriate, such regulations."</p>	<p>In 2010, environmental groups sued EPA, claiming that it had a mandatory duty to revise effluent guidelines for the steam electric generating industry within one year after the Agency announced its intent to begin such a rulemaking. EPA subsequently entered a consent decree with the litigants, which established a longer schedule for the rulemaking.</p>
Effluent Limitations	<p>Section 301(b)(2) requires effluent limitations for categories of point sources that are based on best available technology economically achievable, and section 301(d) states that "[a]ny effluent limitation required under [section 301(b)(2)] shall be reviewed at least every five years and, if appropriate, revised . . ."</p>	<p>EPA's annual review of existing effluent guidelines includes a review of the effluent limitations contained within those guidelines.</p>
Pretreatment Standards	<p>Section 307(b)(1) requires the Administrator to publish regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works, and section 304(g) states that "the Administrator shall . . . review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants . . ."</p>	<p>For consistency and transparency, EPA annually reviews pretreatment standards in the same way it annually reviews effluent guidelines, and it describes its review and revision plans for pretreatment standards along with effluent guidelines in the 304(m) plan.</p>

Relevant Case Law

Our Children's Earth Foundation v. U.S. EPA (9th Cir. 2008)

- Environmental groups sued EPA, claiming in part that it had a mandatory duty to review effluent guidelines and limitations using a technology-based approach, rather than a hazard-based approach. The Ninth Circuit considered whether this and other claims were properly brought under the citizen-suit provision of the CWA, which allows for suits where there is an alleged failure to perform a non-discretionary duty.
- The Court held that the Act does not require EPA to *review* existing effluent guidelines and limitations using a technology-based approach (although it does mandate a technology-based approach in the *promulgation or revision* of regulations). Thus, the Court found that the claim regarding EPA's effluent guidelines and limitations review criteria was not properly before it.
- The Court also held that (1) the Act does not require the publication of 304(m) plans to be synchronized with EPA's annual review or with the calendar year, and (2) while the identification of new categories of point source discharges is a non-discretionary duty, the precise number and kind of such categories identified is discretionary with the Administrator.

Natural Resources Defense Council v. U.S. EPA, 542 F.3d 1235 (9th Cir. 2008)

- Environmental groups sued EPA, claiming that it had a mandatory duty under section 304(m) of the CWA to promulgate ELGs and NSPSs for the construction and development point source category no later than three years after the Agency had listed the category (one for which ELGs and NSPSs had not yet been published) as a new category (as opposed to a revision of an existing ELG) in the 304(m) plan.
- Although the Agency had listed the construction category for rulemaking in its 304(m) plan in 2000, and subsequently published a proposed rule for the industry in 2002, it had since concluded that a rulemaking was not warranted because construction site storm water discharges were already being adequately addressed by existing regulations and the cost of the proposed ELGs was too high and disproportionate given the expected discharge reductions. Thus, in 2004, the Agency removed the construction industry from the 304(m) plan, stating that section 304(m)(1)(B)'s requirements apply only to categories that are discharging non-trivial amounts of toxic or nonconventional pollutants, and that discharges from the construction industry consist predominantly of conventional pollutants (TSS).
- In a decision affirming the district court, the Ninth Circuit held that the "unequivocal language" of the Act required the Agency to promulgate ELGs and NSPSs for the construction industry once it was listed as a new category in the 304(m) plan. The Court did not reach the question of whether EPA could avoid promulgating ELGs and NSPSs for a point source category that had, at one time, been included in a 304(m) plan, if the Agency "formally amended" the 304(m) plan that triggered the duty to promulgate or undertook some other "formal process to delist" the category.

- Since this decision, EPA has listed a new industry for an effluent guidelines rulemaking in the 304(m) plan and subsequently removed the industry from the plan, but only after providing public notice and an opportunity for comment on that decision. Nobody has challenged these actions.

List of Effluent Guidelines Promulgated by EPA

	Industrial Category	40 CFR	First Rulemaking	Last Revision
1	Dental Office	441	2017	2017
2	Oil and Gas Extraction	435	1975	2016
3	Steam Electric Power Generating	423	1974	2015
4	Construction and Development	450	2009	2014
5	Airport Deicing	449	2012	2012
6	Concentrated Animal Feeding Operations (CAFO)	412	1974	2008
7	Iron and Steel Manufacturing	420	1974	2005
8	Concentrated Aquatic Animal Production (Aquaculture)	451	2004	2004
9	Meat and Poultry Products	432	1974	2004
10	Centralized Waste Treatment	437	2000	2003
11	Metal Products and Machinery	438	2003	2003
12	Pharmaceutical Manufacturing	439	1976	2003
13	Coal Mining	434	1975	2002
14	Pulp, Paper and Paperboard	430	1974	2002
15	Landfills	445	2000	2000
16	Transportation Equipment Cleaning	442	2000	2000
17	Waste Combustors	444	2000	2000
18	Leather Tanning and Finishing	425	1982	1996
19	Pesticide Chemicals	455	1978	1996
20	Organic Chemicals, Plastics and Synthetic Fibers (OCPSF)	414	1987	1993
21	Nonferrous Metals Manufacturing	421	1976	1990
22	Nonferrous Metals Forming and Metal Powders	471	1985	1989
23	Aluminum Forming	467	1983	1988
24	Ore Mining and Dressing (Hard Rock Mining)	440	1975	1988
25	Battery Manufacturing	461	1984	1986
26	Copper Forming	468	1983	1986
27	Metal Finishing	433	1983	1986
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57	Grain Mills	406	1974	1974
58	Phosphate Manufacturing	422	1974	1974
59	Rubber Manufacturing	428	1974	1974

Appointment

To: Tripp, Anthony [Tripp.Anthony@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Siddiqui, Ahmar [Siddiqui.Ahmar@epa.gov]; Whitlock, Steve [Whitlock.Steve@epa.gov]; Born, Tom [Born.Tom@epa.gov]; Muela, Stephen [muela.stephen@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Cuff, Jalyse [cuff.jalyse@epa.gov]; Strassler, Eric [Strassler.Eric@epa.gov]; Zomer, Jessica [Zomer.Jessica@epa.gov]; Benware, Richard [Benware.Richard@epa.gov]; Lewis, Samantha [Lewis.Samantha@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Tripp, Anthony [Tripp.Anthony@epa.gov]; Milam, Karen [Milam.Karen@epa.gov]; Matuszko, Jan [Matuszko.Jan@epa.gov]

Attachments: RegionalPretreatmentConf2018_041118.pptx

Location: DCRoomWest6231V/DC-CCW-OST

Start: 4/12/2018 5:00:00 PM

End: 4/12/2018 6:00:00 PM

Recurrence: (none)

Will discuss draft presentation for Regional Pretreatment Coordinators Conference (which is on Monday).

Continuing discussion of ELG Planning – Moved to V because of a conflict with the F conference room.



We will continue to discuss status of projects and the schedule for the next preliminary plan.

Project List:

IWTT

Generic ICR

EGIS

Technology Reviews

HELGA

PFAS Review

Nutrients Review

Engineering Cost Tool

E&EC Detailed Study

Oil and Gas Study

Petroleum Refining Detailed Study

Use of TWFs in ELG Planning

Cost-Effectiveness Review

Economic Screening

Metal Finishing



Effluent Guidelines and Standards Program Update

2018 National Pretreatment Program Meeting

April 16, 2018

Phillip Flanders, Ph.D., P.E.

ELG Planning Project Lead

- Final 2016 Effluent Guidelines Program Plan
 - Announcements in the Final 2016 Plan
- Preliminary 2018 Effluent Guidelines Program Plan
 - Tentative content of the Preliminary 2018 Plan
- Questions and Answers



Status: Final 2016 ELG Program Plan

- Anticipate publication of the Final 2016 Plan very soon
- The Plan discusses:
 - Reconsideration of 2015 Steam Electric ELGs
 - Results of preliminary category reviews
 - Detailed Studies
 - Metal Finishing
 - Electronics and Electrical Components (E&EC)
 - CWT/Holistic Oil and Gas Study
 - Other updates and announcements of new initiatives

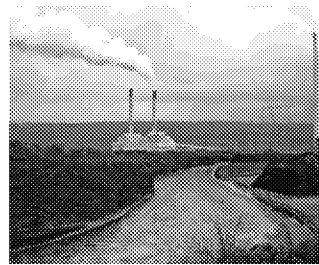
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3



Steam Electric (40 CFR Part 423)

- EPA promulgated revisions to the Steam Electric ELGs in November, 2015; compliance required by 2018-2023
- EPA received petitions for reconsideration that raised wide-ranging and sweeping objections to the rule
- In April, 2016, the Administrator announced his decision to reconsider the rule
- In April 2016, EPA administratively postponed the new, more stringent BAT and PSES limitations and standards under consideration for the following wastestreams:
 - Fly ash transport water
 - Bottom ash transport water
 - Flue gas desulfurization (FGD) wastewater
 - Flue gas mercury control wastewater
 - Gasification wastewater



[DateTime]

4



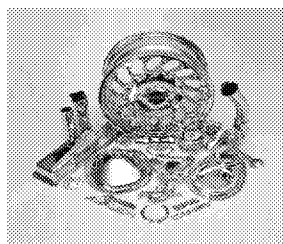
Battery Manufacturing (40 CFR Part 461)

- We conducted a preliminary category review of this category
- We did not identify any uncontrolled pollutants that represent a category-wide issue
- The industry is trending to zero discharge
- Few discharges are not subject to current ELGs
- We are not continuing to review this category.

[DateTime]

5

- We continued the detailed study of this category
- We reviewed information on:
 - the types of operations at facilities that are subject to the ELGs
 - their operations, wastewater management practices, and wastewater characteristics
- We visited 18 facilities to including aerospace, automotive, and medical equipment.





Metal Finishing (40 CFR Part 433)

- There have been advances in WW management
- However there is insufficient data to demonstrate that pollutants in metal finishing discharges are leading to environmental problems or causing problems for POTWs
- We are not continuing the detailed study of this category
- We are aware that because this ELG is specific to "operations" there continue to be questions regarding the applicability of the rule and we will continue to respond to those questions and engage with stakeholders



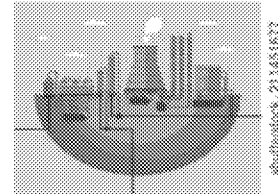
Food and Beverage Manufacturing

- We conducted a preliminary review of the miscellaneous food and beverage sectors not currently regulated by existing ELGs, e.g. distilleries, breweries, soft drink manufacturers
- Majority of pollutants are nutrients and conventionals, e.g. BOD, TSS, and O&G
- Distilleries and soft drink manufacturers account for one third of pollutant discharges – most of which is to POTWs
- Further review is not warranted at this time



Petroleum Refining (40 CFR Part 419)

- We are continuing the detailed study of this category
- Interested in effects of wet air pollution control and changing crude slates on wastewater characteristics
- We completed a questionnaire effort with responses from 22 refineries and visited 9 refineries
- We are working with industry representatives to develop a limited sampling campaign to better understand presence or absence of pollutants in refinery discharges
- There are new technologies that treat nitrate, selenium, mercury and some toxic organics



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Electronics and Electrical Components (40 CFR Part 469)

- We conducted a preliminary category review of this industry
- This category was recommended by NACWA
- We Coordinated with NACWA, Control Authorities, and Industry groups
- We attended conferences and reviewing available treatment technology data
- We are working to updating industry profile, wastewater characterization, and treatment technology information
- Data need: wastewater characterization resulting from industry changed and associated treatment technology information
- We are initiating a detailed study for this category

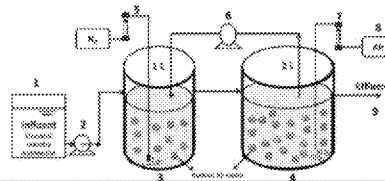
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10



Centralized Waste Treatment (40 CFR Part 437)

- We continued the detailed study specific to facilities managing oil and gas extraction wastewater
- Conducted site visits to a range of facilities (zero discharge, direct discharge, indirect discharge)
- Reviewed permit limits and discharge data
- Conducted sampling at two facilities
- Reviewed available treatment technology information
- Found ~10 existing facilities discharging; many do not include adequate technology to manage pollutants found in the wastewater
- We will continue to study these facilities as part of the Holistic Oil and Gas Study



[DateTime]

11



New Holistic Oil and Gas Study

- We plan to continue studying CWT facilities in the context of an expanded study looking at the management of oil and gas extraction wastewaters more holistically
- Primary wastewater management practice is reuse
- However, treatment and discharge does occur in some cases, usually through off-site centralized waste treatment facilities
- We intend to engage with stakeholders to evaluate approaches to manage these wastewaters (both conventional and unconventional)
- Review to include assessment of technologies for facilities that treat and discharge oil and gas extraction wastewater
- The Final 2016 Plan announces this as a new detailed study

- EAD is working on two efforts regarding discharges of nutrients
- National Study of Nutrient Removal and Secondary Technologies
 - We conducting a national study focused on nutrient removal at POTWs
 - We are aiming to obtain nationwide data on nutrient removal to help set more realistic and achievable nutrient reduction targets.
 - We distributed a screener questionnaire to collect data on technology in place and typical operations challenges



[DateTime]

13

- We are integrating industrial wastewater nutrient discharges into the annual review and planning process
- We are conducting a cross-industry review of nutrient discharges
- Our objective is to identify industries discharging nutrients where there may be potential to reduce those discharges and prioritize for further review
- We plan to provide information on methodology and preliminary findings in the Preliminary 2018 Plan



[DateTime]

14



Perfluoroalkyl Substances (PFASs)

- We are reviewing per- and polyfluoroalkyl substances (PFASs) to determine if there are surface water discharges of these compounds from industrial categories that warrant regulation through ELGs
- PFASs are a large group of persistent, bioaccumulative, and potentially toxic synthetic compounds that have been used in surfactants and as oil and water-repellant coatings in numerous consumer and industrial products since their production began in the early 1950s
- We see this as part of broader Agency-wide efforts regarding these compounds

[DateTime]

15



Preliminary 2018 Effluent Guidelines Program Plan

- Goal: publish the Preliminary 2018 Plan in April of 2019
- Comment period would be April-May of 2019
- Tentative contents include (not yet public information)
 - Update on nutrient discharges review
 - Update on PFASs review
 - HELGA

- The Historic Effluent Limitations Guidelines Access (HELGA) database will compile information on Effluent Limitations Guidelines and Standards (ELGs) into a searchable database
 - HELGA support annual review of ELGs under the Clean Water Act
- HELGA will be able to identify and compare pollutant limitations and their control technology bases (within and across ELGs)
- Eventually we would like to make the HELGA database available online to assist state and local regulators with implementing NPDES programs and developing permits.
- Example Data Elements for each ELG:
 - Applicability
 - Definitions
 - Subcategories
 - Level of Control (e.g. BAT)
 - Wastestreams/Process Operations
 - Pollutant Limitations or ZLD requirements
 - CFR references for BMPs, etc.
 - Rule History
 - Technology bases

[DateTime]

17



Industrial Wastewater Treatment Technology Database (IWTT)

- Now available online at www.epa.gov/iwtt
- Provides technology performance data for industrial wastewater treatment from peer-reviewed literature that meets data quality criteria
- Contains data for 35 industries, 240 treatment systems, and 195 pollutant parameters, with plans to increase database size over time

The screenshot shows the 'Guided Technology Search' interface. At the top, there are three tabs: 'GUIDED TECHNOLOGY SEARCH' (selected), 'ARTICLE SEARCH', and 'DOWNLOAD DATABASE'. To the right are links for 'Queries', 'Help', and 'About IWTT'. The main heading is 'Guided Technology Search', followed by the subtitle 'Access pilot and full-scale treatment performance data by industry, treatment technology, or pollutant.' Below this are three search categories, each with an icon and a dropdown menu: 'Industry' (factory icon), 'Treatment Technology' (funnel icon), and 'Pollutant' (flask icon). Each dropdown menu has a placeholder text 'Search by [category]...' and a downward arrow. At the bottom center is a 'SEARCH' button.

18



Staff Contact Information

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tripp.anthony@epa.gov – (202) 566-1419
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- Pharmaceutical Manufacturing: Meghan Hessenauer
hessenauer.meghan@epa.gov – (202) 566-1040

[DateTime]

19

Appointment

From: Higgs, Michele [higgs.michele@epa.gov]
Sent: 6/18/2018 5:22:26 PM
To: Lape, Jeff [lape.jeff@epa.gov]; Wood, Robert [Wood.Robert@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Flanders, Phillip [Flanders.Phillip@epa.gov]; Parikh, Pooja [Parikh.Pooja@epa.gov]
CC: Crawford, Tiffany [Crawford.Tiffany@epa.gov]; Tripp, Anthony [Tripp.Anthony@epa.gov]; Born, Tom [Born.Tom@epa.gov]; Matuszko, Jan [Matuszko.Jan@epa.gov]; Strassler, Eric [Strassler.Eric@epa.gov]; Pritts, Jesse [Pritts.Jesse@epa.gov]; Lewis, Samantha [Lewis.Samantha@epa.gov]; Whitlock, Steve [Whitlock.Steve@epa.gov]; Siddiqui, Ahmar [Siddiqui.Ahmar@epa.gov]; Benware, Richard [Benware.Richard@epa.gov]; Milam, Karen [Milam.Karen@epa.gov]
Subject: Pre-Options Selection Briefing for Preliminary ELG Program Planning Plan 14 -- [REDACTED]
Attachments: PrelimPlan14 Briefing_061818.docx
Location: DCRoomWest5233B/DC-CCW-OST

Start: 6/18/2018 6:00:00 PM
End: 6/18/2018 6:50:00 PM
Show Time As: Tentative

Note Attachment

POC: Philip Flanders
Phone: 202-566-8323

[REDACTED]

Message

From: Thomas, Dana [Thomas.Dana@epa.gov]
Sent: 9/6/2018 1:27:12 PM
To: Scozzafava, MichaelE [Scozzafava.MichaelE@epa.gov]; Damico, Brian [Damico.Brian@epa.gov]; Lalley, Cara [Lalley.Cara@epa.gov]; Keating, Jim [Keating.Jim@epa.gov]
Subject: RE: OST Message
Attachments: Nutrients 1 pager final.docx

Here is the file that we can steal the graphic from:

Dana

-----Original Appointment-----

From: Scozzafava, MichaelE
Sent: Tuesday, September 04, 2018 3:24 PM
To: Scozzafava, MichaelE; Thomas, Dana; Damico, Brian; Lalley, Cara; Keating, Jim
Subject: OST Message
When: Thursday, September 06, 2018 9:00 AM-10:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest5231L/DC-CCW-OST

Hi Folks,

I know everybody is not available at this time, but I would still like to organize a quick meeting to discuss the task we've been assigned and how to move forward as expeditiously as possible. I've attached the OST Management Retreat Notes which provide some context. Relative to our task, here's what the notes say:

OST Story: Next Steps

- Product: Main Points, bullets. distilled from this list, examples behind the bullets
- Visual: graphically
- Process: Mike (Lead), Jim, Brian, Dana, Cara

Message

From: Matuszko, Jan [Matuszko.Jan@epa.gov]
Sent: 6/14/2018 5:18:02 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: Re: Are you busy at 2?

My office

Sent from my iPhone

On Jun 14, 2018, at 1:02 PM, Damico, Brian <Damico.Brian@epa.gov> wrote:

Where?

-B

Brian D'Amico
Chief, Technology and Analytical Support Branch
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
Washington, DC
(202) 566-1069 (Office)
(202) 384-2190 (EPA Cell)

On Jun 14, 2018, at 1:02 PM, Matuszko, Jan <Matuszko.Jan@epa.gov> wrote:

That would be great.

Sent from my iPhone

On Jun 14, 2018, at 12:49 PM, Damico, Brian
<Damico.Brian@epa.gov> wrote:

You want me there? I'm free.

Brian D'Amico
Chief, Technology and Analytical Support Branch
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
Washington, DC

(202) 566-1069 (Office)
(202) 384-2190 (EPA Cell)

-----Original Message-----

From: Matuszko, Jan

Sent: Thursday, June 14, 2018 12:49 PM

To: Damico, Brian <Damico.Brian@epa.gov>

Subject: Are you busy at 2?

Steve and I are scheduled to talk about nutrients effort or ELG plan.

Sent from my iPhone

Message

From: Matuszko, Jan [Matuszko.Jan@epa.gov]
Sent: 6/14/2018 5:02:25 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: Re: Are you busy at 2?

That would be great.

Sent from my iPhone

> On Jun 14, 2018, at 12:49 PM, Damico, Brian <Damico.Brian@epa.gov> wrote:

>

> You want me there? I'm free.

>

>

> _____
> Brian D'Amico
> Chief, Technology and Analytical Support Branch
> Engineering and Analysis Division
> Office of Science and Technology
> U.S. Environmental Protection Agency
> Washington, DC
> (202) 566-1069 (Office)
> (202) 384-2190 (EPA Cell)

>

> -----Original Message-----

> From: Matuszko, Jan
> Sent: Thursday, June 14, 2018 12:49 PM
> To: Damico, Brian <Damico.Brian@epa.gov>
> Subject: Are you busy at 2?

>

> Steve and I are scheduled to talk about nutrients effort or ELG plan.

>

> Sent from my iPhone

Message

From: Matuszko, Jan [Matuszko.Jan@epa.gov]
Sent: 6/14/2018 4:49:00 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: Are you busy at 2?

Steve and I are scheduled to talk about nutrients effort or ELG plan.

Sent from my iPhone

Message

From: Matuszko, Jan [Matuszko.Jan@epa.gov]
Sent: 1/12/2018 5:57:40 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: Fw: ELG Plan Briefing
Attachments: ELGplanbriefinggross11218final.PPTX; Legal Framework for ELGPlan.docx

From: Matuszko, Jan
Sent: Friday, January 12, 2018 12:53 PM
To: Campbell, Ann
Cc: Wood, Robert; Scozzafava, MichaelE; Flanders, Phillip
Subject: ELG Plan Briefing

Here you go. Trying to make your 1pm deadline. Do you need someone to bring you hard copies as well.

Legal Framework for EPA's Effluent Limitations Guidelines Review and Revision Process

Subject	Relevant Clean Water Act Provision(s)	Notes
Effluent Limitations "Guidelines"	<p>Section 304(m)(1): "Within 12 months after February 4, 1987, and biennially thereafter, the Administrator shall publish in the Federal Register a plan that shall —</p> <p>(A) establish a schedule for the annual review and revision of promulgated effluent guidelines, in accordance with [section 304(b)];</p> <p>(B) identify categories of sources discharging toxic or nonconventional pollutants for which guidelines under [section 304(b)(2) and section 316] have not previously been published; and</p> <p>(C) establish a schedule for promulgation of effluent guidelines for categories identified in subparagraph (B), under which promulgation of such guidelines shall be no later than . . . 3 years after the publication of the plan for categories identified in [plans published after Feb. 4, 1987].</p> <p>Section 304(m)(2): "The Administrator shall provide for public review and comment on the plan prior to final publication."</p>	<p>Regarding EPA's criteria for reviewing guidelines, see <i>Our Children's Earth Foundation v. EPA</i>, below.</p> <p>Regarding the promulgation of guidelines for new industries, see <i>Natural Resources Defense Council v. EPA</i>, below.</p>
	<p>Section 304(b), which is referenced in section 304(m), states: "For the purpose of adopting or revising effluent limitations . . . the Administrator shall . . . publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and at least annually thereafter, revise, if appropriate, such regulations."</p>	<p>In 2010, environmental groups sued EPA, claiming that it had a mandatory duty to revise effluent guidelines for the steam electric generating industry within one year after the Agency announced its intent to begin such a rulemaking. EPA subsequently entered a consent decree with the litigants, which established a longer schedule for the rulemaking.</p>
Effluent Limitations	<p>Section 301(b)(2) requires effluent limitations for categories of point sources that are based on best available technology economically achievable, and section 301(d) states that "[a]ny effluent limitation required under [section 301(b)(2)] shall be reviewed at least every five years and, if appropriate, revised . . ."</p>	<p>EPA's annual review of existing effluent guidelines includes a review of the effluent limitations contained within those guidelines.</p>
Pretreatment Standards	<p>Section 307(b)(1) requires the Administrator to publish regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works, and section 304(g) states that "the Administrator shall . . . review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants . . ."</p>	<p>For consistency and transparency, EPA annually reviews pretreatment standards in the same way it annually reviews effluent guidelines, and it describes its review and revision plans for pretreatment standards along with effluent guidelines in the 304(m) plan.</p>

Relevant Case Law

Our Children's Earth Foundation v. U.S. EPA (9th Cir. 2008)

- Environmental groups sued EPA, claiming in part that it had a mandatory duty to review effluent guidelines and limitations using a technology-based approach, rather than a hazard-based approach. The Ninth Circuit considered whether this and other claims were properly brought under the citizen-suit provision of the CWA, which allows for suits where there is an alleged failure to perform a non-discretionary duty.
- The Court held that the Act does not require EPA to *review* existing effluent guidelines and limitations using a technology-based approach (although it does mandate a technology-based approach in the *promulgation or revision* of regulations). Thus, the Court found that the claim regarding EPA's effluent guidelines and limitations review criteria was not properly before it.
- The Court also held that (1) the Act does not require the publication of 304(m) plans to be synchronized with EPA's annual review or with the calendar year, and (2) while the identification of new categories of point source discharges is a non-discretionary duty, the precise number and kind of such categories identified is discretionary with the Administrator.

Natural Resources Defense Council v. U.S. EPA, 542 F.3d 1235 (9th Cir. 2008)

- Environmental groups sued EPA, claiming that it had a mandatory duty under section 304(m) of the CWA to promulgate ELGs and NSPSs for the construction and development point source category no later than three years after the Agency had listed the category (one for which ELGs and NSPSs had not yet been published) as a new category (as opposed to a revision of an existing ELG) in the 304(m) plan.
- Although the Agency had listed the construction category for rulemaking in its 304(m) plan in 2000, and subsequently published a proposed rule for the industry in 2002, it had since concluded that a rulemaking was not warranted because construction site storm water discharges were already being adequately addressed by existing regulations and the cost of the proposed ELGs was too high and disproportionate given the expected discharge reductions. Thus, in 2004, the Agency removed the construction industry from the 304(m) plan, stating that section 304(m)(1)(B)'s requirements apply only to categories that are discharging non-trivial amounts of toxic or nonconventional pollutants, and that discharges from the construction industry consist predominantly of conventional pollutants (TSS).
- In a decision affirming the district court, the Ninth Circuit held that the "unequivocal language" of the Act required the Agency to promulgate ELGs and NSPSs for the construction industry once it was listed as a new category in the 304(m) plan. The Court did not reach the question of whether EPA could avoid promulgating ELGs and NSPSs for a point source category that had, at one time, been included in a 304(m) plan, if the Agency "formally amended" the 304(m) plan that triggered the duty to promulgate or undertook some other "formal process to delist" the category.

- Since this decision, EPA has listed a new industry for an effluent guidelines rulemaking in the 304(m) plan and subsequently removed the industry from the plan, but only after providing public notice and an opportunity for comment on that decision. Nobody has challenged these actions.

Message

From: Whitlock, Steve [Whitlock.Steve@epa.gov]
Sent: 10/23/2018 5:24:31 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: RE: Letter from Durbin
Attachments: chartchartNPDESIL0023914TNload2017.jpeg; chartNPDESIL0023914TNconc2017.jpeg

Brian,

Facility IL0023914, JBS/Swift Pork Co., Beardstown, IL, has a total nitrogen 30 day limit of 2794 lbs-N/day (134 mg-N/L), and a daily maximum limit of 4045 lbs-N/day (194 mg-N/L). The DMR data shows its discharge is within these limits (see the attached plots of DMR data from 07/01/2015 – 10/19/2018) with daily average of 2072 lbs/day. Annually in 2017 it discharged 616,788 lbs of nitrogen and had an average facility discharge flow of 1.62 MGD.

In our 304(m) plan and supporting analysis, the reported values are from 2015 data and show JBS/Swift Pork Co. discharged 396,971 lbs/year nitrogen. The Meat and Poultry Processors category (40 CFR Part 432) discharged 16,500,000 lbs-Nitrogen/year and was one of the highest nitrogen discharging industrial categories.

Let me know if you have questions or need more.

--Steve--

From: Damico, Brian
Sent: Tuesday, October 23, 2018 10:06 AM
To: Whitlock, Steve <Whitlock.Steve@epa.gov>
Subject: FW: Letter from Durbin

Good morning Steve,

Can you look at the facility listed in this letter and see how it compares to your estimates of the facility in the nutrient analysis you've been looking at.

If you can pull that today I'd appreciate it.

Thanks!

-B

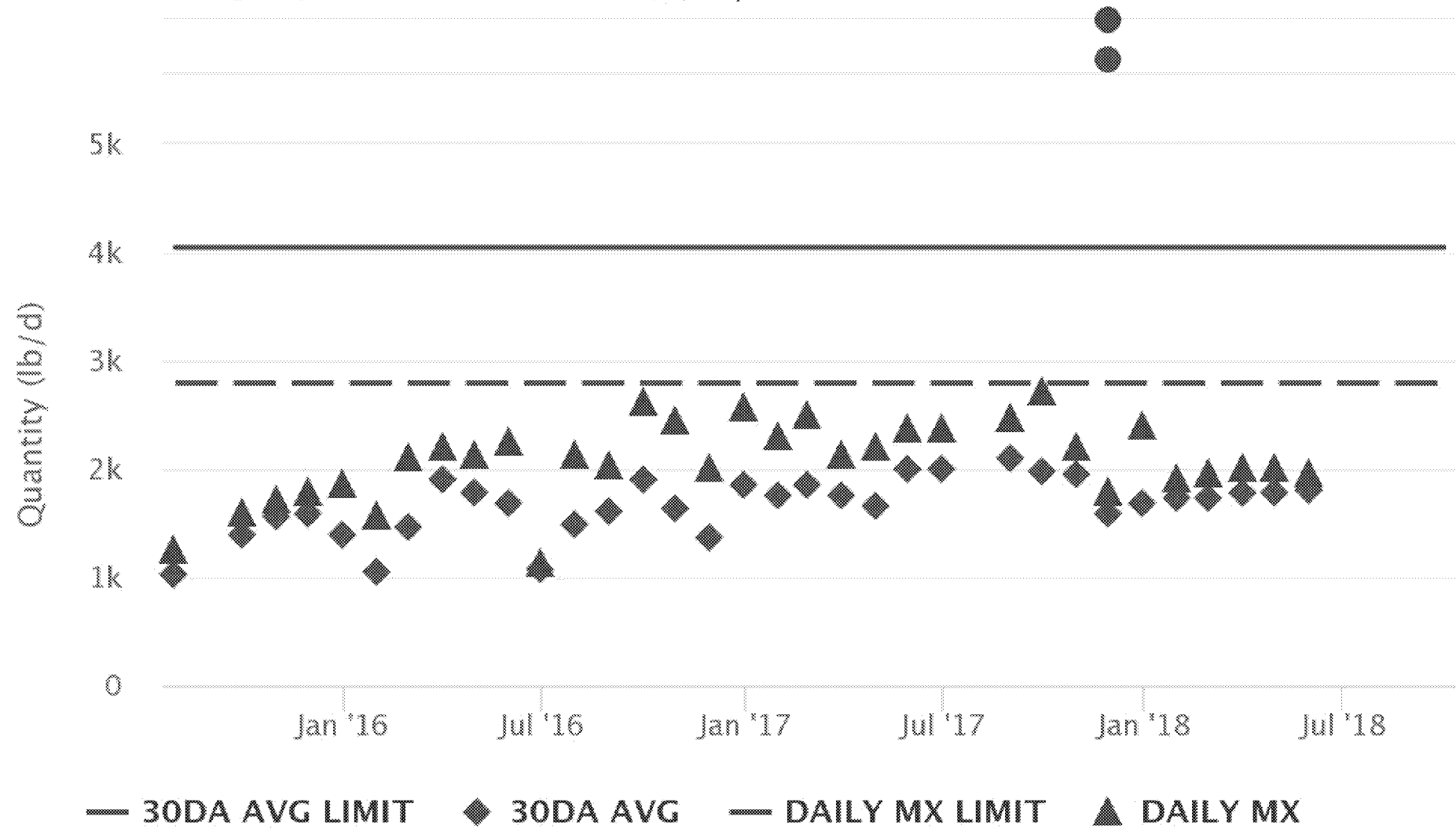
Brian D'Amico
Chief, Technology and Analytical Support Branch
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
Washington, DC
(202) 566-1069 (Office)
(202) 384-2190 (EPA Cell)

From: Scozzafava, MichaelE
Sent: Thursday, October 18, 2018 9:06 AM
To: Damico, Brian <Damico.Brian@epa.gov>; Matuszko, Jan <Matuszko.Jan@epa.gov>
Cc: Wood, Robert <Wood.Robert@epa.gov>
Subject: Letter from Durbin

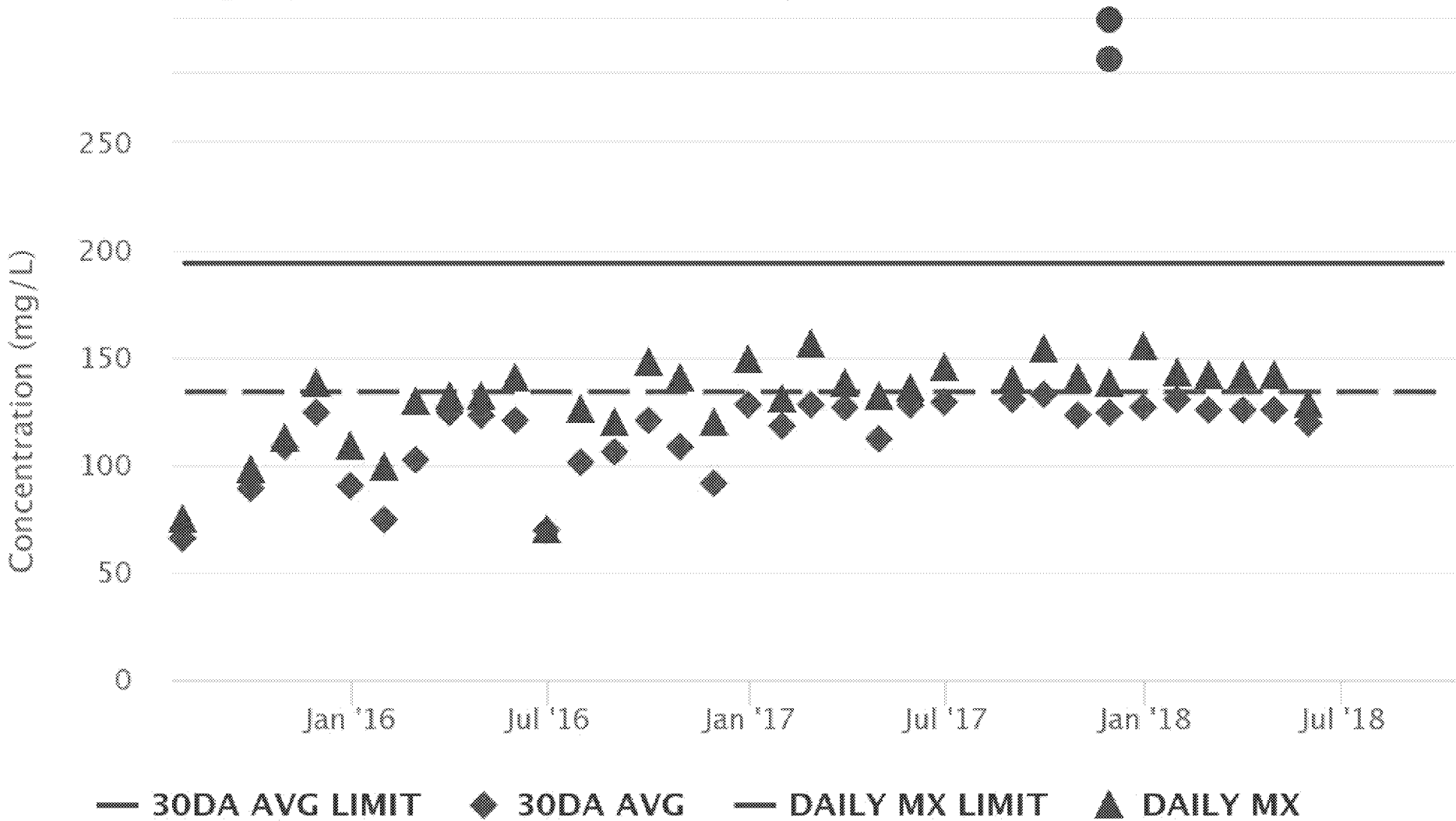
We're going to need to talk through the response on this one I think. Durbin asked us to review the Meat and Poultry Products ELG based on some data from a pork processing plant in Illinois.

Michael Scozzafava, Deputy Director
Engineering and Analysis Division
OW/OST
p: 202-566-2858
cell: 202-407-2555

CARGILL MEAT SOLUTIONS CORPORATION (IL0023914) 002 – Nitrogen, total [as N] – Effluent Gross –
Late/Missing Reports Timeline Quantity



CARGILL MEAT SOLUTIONS CORPORATION (IL0023914) 002 – Nitrogen, total [as N] – Effluent Gross –
Late/Missing Reports Timeline Concentration



Message

From: Whitlock, Steve [Whitlock.Steve@epa.gov]
Sent: 10/22/2018 1:00:23 PM
To: Damico, Brian [Damico.Brian@epa.gov]
Subject: RE: teleworking today 202-566-1541
Attachments: Nutrient Study Briefing Slides_051718abbreviatedver.pptx

Here it is. Let me know if you need any more.

--Steve--

From: Damico, Brian
Sent: Monday, October 22, 2018 8:42 AM
To: Whitlock, Steve <Whitlock.Steve@epa.gov>
Subject: RE: teleworking today 202-566-1541

Steve,

We are responding to a Senator's inquiry about Meat Packing and nutrients. Can you please send me the presentation that you showed me in Jan's office a while ago? Thanks!

-B

Brian D'Amico
Chief, Technology and Analytical Support Branch
Engineering and Analysis Division
Office of Science and Technology
U.S. Environmental Protection Agency
Washington, DC
(202) 566-1069 (Office)
(202) 384-2190 (EPA Cell)

From: Whitlock, Steve
Sent: Monday, October 22, 2018 7:36 AM
To: OST-EAD <OSTEAD@epa.gov>
Subject: teleworking today 202-566-1541

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Steve Whitlock, P.E. | Environmental Engineer
U.S. Environmental Protection Agency | Office of Water | Office of Science and Technology
Engineering and Analysis Division (4303T)
1200 Pennsylvania Avenue NW, Washington DC 20460
Phone: 202-566-1541 | fax 202-566-1140 | whitlock.steve@epa.gov
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